

**EXHIBIT 4**

**Pensabene Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
	)	
	)	
	)	
_____	)	

**DECLARATION OF JOSEPH A. PENSABENE IN SUPPORT OF DEBTORS' MOTION  
FOR ENTRY OF AN ORDER UNDER BANKRUPTCY CODE SECTION 363 AND  
BANKRUPTCY RULE 6004 (I) AUTHORIZING THE DEBTORS TO COMPENSATE  
PRICEWATERHOUSECOOPERS, LLP FOR FORECLOSURE REVIEW SERVICES IN  
FURTHERANCE OF THE DEBTORS' COMPLIANCE OBLIGATIONS UNDER  
FEDERAL RESERVE BOARD CONSENT ORDER AND (II) REAFFIRMING RELIEF  
GRANTED IN THE GA SERVICING ORDER**

I, Joseph A. Pensabene, under penalty of perjury, declare as follows:

1. I am Executive Vice President/Chief Servicing Officer of Residential Capital, LLC, a limited liability company organized under the laws of the state of Delaware, a debtor and debtor in possession in the above-captioned Chapter 11 cases, and the parent of the other debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the "**Debtors**"). I have been employed by the Debtors since May of 1996 and I have held my current position since August of 2008. Prior to assuming my current role, I was the Senior Vice President of Consumer Operations, responsible for fulfillment on new production for each of the Debtors' consumer lending channels. I am authorized to make this declaration on behalf of the Debtors and in support of the *Debtors' Motion for Entry of an Order under Bankruptcy Code Section 363 and Bankruptcy Rule 6004 (i) Authorizing the Debtors to Compensate PricewaterhouseCoopers, LLP for Foreclosure Review Services in Furtherance of the Debtors' Compliance Obligations*

*under Federal Reserve Board Consent Order and (ii) Reaffirming Relief Granted in the GA Servicing Order* (the “**Motion**”).<sup>1</sup>

2. In my capacity as Executive Vice President/Chief Servicing Officer, I was involved with the negotiation of the FRB Engagement Letter on behalf of the Debtors. I am also familiar with the circumstances surrounding the Debtors’ entry into and the terms of the FRB Consent Order (defined below). I submit this declaration (the “**Declaration**”) on the Debtors’ behalf in conjunction with and in support of the Motion. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge; information supplied or verified by personnel in departments within the various business units of the Debtors or the Debtors’ advisors; my review of the Debtors’ relevant documents; or my general experience, expertise, and knowledge of the Debtors’ mortgage loan servicing operations. In making my statements based on my review of the Debtors’ relevant documents and other information prepared or collected by the Debtors’ employees, I have relied upon these employees accurately recording, preparing, collecting, or verifying any such documentation and other information. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

### **FRB CONSENT ORDER**

3. On April 13, 2011, GMAC Mortgage, ResCap, AFI, and Ally Bank entered into a Consent Order (the “**FRB Consent Order**”) with the FDIC and the FRB. Pursuant to the FRB Consent Order, the Debtors, AFI and Ally Bank are required to implement, among other things, certain board oversight and risk management programs.

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<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

4. Additionally, paragraph 3 of the FRB Consent Order requires the engagement of an independent consultant to conduct a review (the “**FRB Foreclosure Review**”) of foreclosure actions or proceedings, including foreclosure sales completed during the period from January 1, 2009 to December 31, 2010. The FRB Consent Order requires the independent consultant to review loan files for compliance with various state and federal laws, including, but not limited to, bankruptcy laws and the Servicemembers Civil Relief Act (“**SCRA**”). The FRB Consent Order also requires that the independent consultant review applicable loan files to determine if improper fees were charged, and to determine whether certain loss mitigation guidelines were complied with. In the event that PwC discovers any errors through the FRB Foreclosure Review which are deemed to have resulted in financial injury to the borrower, the Debtors will be required to remediate such errors.

5. Throughout the term of the FRB Consent Order, AFI, Ally Bank and ResCap are required to submit quarterly progress reports regarding their progress under the FRB Consent Order. The Consent Order Debtors and AFI are also required to engage an independent third-party consultant – the independent validation consultant – to analyze the relevant parties’ compliance with the FRB Consent Order. The independent validation consultant’s report must be submitted within 15 months after the date the FRB Consent Order. At this point, the date for hiring the independent validation agent has been set for September 30, 2012 and the details of the scope of the independent validation consultant’s role and the associated costs remain unclear, although the Debtors expect the cost to be relatively insignificant when compared with the expected costs for PwC’s services based on initial proposals from professionals submitting bids to act as the independent validation consultant.

### **PWC'S ENGAGEMENT**

6. In accordance with the requirements of the FRB Consent Order, the Consent Order Debtors, together with AFI, engaged PwC, with the approval of certain of the Consent Order Regulators, to act as the primary independent consultant in conducting the FRB Foreclosure Review. The Debtors and AFI also engaged two law firms, Hudson Cook and Pepper Hamilton, to assist PwC in completing the FRB Foreclosure Review.

7. Representatives of the Debtors, AFI, and PwC engaged in discussions regarding the terms of the engagement, and it is my understanding that the hourly rates contained in the resulting FRB Engagement Letter are consistent with the terms of engagements letters between the Debtors and PwC in other non-FRB Consent Order related engagements. Pursuant to the FRB Engagement Letter, AFI and GMAC Mortgage are jointly and severally liable for fulfillment of any and all obligations and liabilities to PwC. However, PwC takes direction from the Federal Reserve Bank of Chicago<sup>2</sup> in order to maintain the independence required by the FRB Consent Order. Indeed, the FRB Engagement Letter prohibits GMAC Mortgage and AFI from attempting to influence PwC's factual findings.

8. Under the FRB Engagement Letter, PwC has agreed to perform the sampling and file review, under the six "workstreams" identified in the FRB Consent Order, consistent with the FRB Foreclosure Review requirement in the FRB Consent Order. PwC will then provide a Foreclosure Review Report, as required by the FRB Consent Order. PwC has also agreed to oversee a third-party vendor involved in running a complaint process that permits borrowers to "opt-in" their loan file into the FRB Foreclosure Review process.

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<sup>2</sup> The OCC has also been involved in issuing direction to PwC and other independent consultants.

9. As of the Petition Date, the Debtors estimated that the cost of the FRB Foreclosure Review could reach \$180 million. The Debtors' most recent estimates indicate that the cost of compliance with the FRB Foreclosure Review could reach \$250 million, based on the response rate of the complaint process described in paragraph 8, which may reach between 6-10% of all loans subject to actions or proceedings (including foreclosures that were in process or completed) for loans serviced by the Consent Order Debtors pending at any time between January 1, 2009 and December 31, 2010,<sup>3</sup> and the time the Debtors estimate it will take to complete the FRB Foreclosure Review and the monthly costs of the resources necessary to complete the review, including monthly compensation to PwC and the Law Firms. Additionally, the Debtors estimate that the remediation payments to affected borrowers required after the FRB Foreclosure Review has been completed will be between thirty-five and sixty million dollars, based on (i) the estimated size of the population reviewed (ii) the rate of "observations"<sup>4</sup> to date, (iii) the expected rate of violations observed as a percentage of the loan files in which PwC identifies an "observation," and (iv) an estimate of the expected average cost to remediate an identified violation. However, the deadline for borrowers to opt in to the FRB Foreclosure Review through the complaint process overseen by PwC has been extended by the FRB and OCC for a third time through December of 2012. As a result, the number of files requiring review, as well as these estimates, may change.

10. The FRB Engagement Letter also contains certain Indemnification Provisions requiring the Debtors to indemnify PwC for certain types of claims, subject to exceptions

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<sup>3</sup> As of July 31, 2012, the response rate was 5.3%.

<sup>4</sup> As described in the Bocresion Declaration, PwC reviews the relevant loan files for certain "observations" based on worksheets created by Hudson Cook and, if any such observations are identified, the loan file is referred to one of the Law Firms (except with respect to the fees and loan modification workstreams) for a legal determination regarding whether a violation occurred.

specified in the FRB Engagement Letter. The terms of the Indemnification Provisions were agreed to by the parties to the FRB Engagement Letter after arm's-length discussions, and it is my understanding that the Indemnification Provisions are consistent with market terms.

11. During the course of the negotiations with PwC, representatives of the Federal Reserve Bank of Chicago provided regular guidance regarding the structure of the FRB Engagement Letter, the scope of the work required, and provided sign-off on the completed FRB Engagement Letter. Additionally, the Federal Reserve Bank of Chicago provided guidance regarding which law firms could be retained to assist PwC in conducting the FRB Foreclosure Review.<sup>5</sup>

12. It is my understanding that compliance with the requirements of the DOJ/AG Settlement and the FRB Consent Order may be required to ensure the continued support of various governmental entities during the Debtors' Chapter 11 cases. Additionally, it is my understanding that these settlements with the Consent Order Regulators have been used to assist the Debtors in reaching agreements with other governmental authorities in connection with such other investigations of the Debtors.

#### **DOJ/AG FILE REVIEW**

13. Additionally, the Consent Order Debtors are currently negotiating with PwC regarding the terms of an engagement letter under which PwC would conduct the independent consulting services necessary to comply with the Servicemembers' Civil Rights Act ("SCRA") Review (the "**DOJ/AG File Review**") requirements contained in the DOJ/AG Settlement. The Debtors' failure to comply with the terms of the DOJ/AG Settlement could lead to further investigations by the DOJ or the AGs. It is my understanding that any such investigations or

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<sup>5</sup> The OCC and FRB were also involved in this process.

proceedings could require the Debtors to expend additional funds in defense and could delay or otherwise impede the sale of the Debtors' businesses.

14. While PwC has not begun to provide the services necessary to complete the DOJ/AG File Review, at this juncture the Debtors' expect that completion of the DOJ/AG File Review is likely to be substantially less costly than completion of the FRB Foreclosure Review. However, because the Debtors and PwC have not yet completed a review to determine the universe of foreclosures subject to the DOJ/AG File Review, the actual costs of the DOJ/AG File Review remain unknown.

Pursuant to 28 U.S.C. §1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of September 2012.

/s/ Joseph A. Pensabene  
Joseph A. Pensabene  
Executive Vice President/  
Chief Servicing Officer of  
Residential Capital, LLC